

1 you covered the areas. Let's move on to something else.

2 MS. SCHMELTZER: If I could just have a moment, Your  
3 Honor?

4 JUDGE SIPPEL: Certainly. Let's go off the record.  
5 (Off the record. On the record.)

6 JUDGE SIPPEL: Ms. Schmeltzer, with respect to  
7 Exhibit 30 for identification?

8 MS. SCHMELTZER: Right.

9 JUDGE SIPPEL: You want that into evidence?

10 MS. SCHMELTZER: Yes.

11 JUDGE SIPPEL: Any objections?

12 MR. HOWARD: Yes, Your Honor. Ms., Ms. Barr testi-  
13 fied she didn't see it before it went out. It's irrelevant in  
14 this matter.

15 JUDGE SIPPEL: I, I'm going to -- Mr. Zauner?

16 MR. ZAUNER: Also, Your Honor, there's no questions  
17 that was -- that you permitted as to this document.

18 MS. SCHMELTZER: Yes, there were.

19 MR. GREENEBAUM: There were?

20 MS. SCHMELTZER: Yes.

21 JUDGE SIPPEL: Yes. There, there were some --

22 MR. GREENEBAUM: I'm sorry.

23 JUDGE SIPPEL: -- questions.

24 MR. GREENEBAUM: I thought they were all sustained.

25 I -- no.

1 JUDGE SIPPEL: I, I -- well, I think so. I think,  
2 if I'm correct on that. But let me hear from Mr. Zauner.

3 MR. ZAUNER: Your Honor, Your Honor -- I was going  
4 to say this, but Exhibit -- we're talking about Exhibit 30  
5 now, is that correct.

6 JUDGE SIPPEL: That's Mr. Howard's letter to Mr.  
7 Leader back in July of -- July 13th of --

8 MR. GREENEBAUM: Well, I had the wrong document --

9 MR. HOWARD: And I can't find the document. So, I'm  
10 at a loss to make a comment. I -- do you have a copy? Let me  
11 see.

12 JUDGE SIPPEL: All right. Well, I am again --

13 MR. HOWARD: Oh, I've got it now. This is -- this  
14 is the --

15 JUDGE SIPPEL: Yeah.

16 MR. HOWARD: Yes.

17 JUDGE SIPPEL: I, I'm going to, I'm going to reject  
18 that as well, and I'll, and I'll tell you why, because, as I  
19 say, it's essentially an attorney's advocate work product,  
20 that it's true that, that each -- that counsel checked with  
21 Ms. Barr on certain points of it and you've made those points  
22 in the record, but this is not her product. This is not  
23 something that she -- and, and it is not a business record of,  
24 of the station in the sense of something that was generated at  
25 the station.

1 MS. SCHMELTZER: You know, just before lunch, Your  
2 Honor, she characterized the meaning of statements in that  
3 document and she also -- that document is referred to in  
4 Scripps Howard's direct case. So, I don't know how we cannot  
5 have it in the record. It is the subject of paragraph 39 of  
6 their direct case. Now, footnote 6, which is the subject of  
7 paragraph 40, already is in the record.

8 JUDGE SIPPEL: Well, I, I would say, you know, in  
9 light of that, in light of the fact that it is relied upon by  
10 the witness in her testimony -- I mean, relied upon as being a  
11 basis for her testimony -- it, it doesn't hurt to, to permit  
12 it to come in for purposes of completing her testimony. It's,  
13 it's a more complete version of the same story. So, for what  
14 it's worth in that respect, I will receive it into evidence.  
15 30 is now in.

16 (Whereupon, the document marked for  
17 identification as Four Jacks Exhibit  
18 No. 30 was received into evidence.)

19 JUDGE SIPPEL: That leaves 32, the Declaration of  
20 Emily Barr dated February the 15th.

21 MS. SCHMELTZER: Yeah. I would move that exhibit  
22 into evidence, Your Honor.

23 JUDGE SIPPEL: Is there an objection to that?

24 MR. HOWARD: Could, could we have a moment, Your  
25 Honor?

1 JUDGE SIPPEL: Off the record for a minute.

2 (Off the record. On the record.)

3 JUDGE SIPPEL: We're back on the record. Mr. Zaun-  
4 er?

5 MR. ZAUNER: You've reached -- I just was asking  
6 before -- we said we, we don't, we don't object --

7 JUDGE SIPPEL: I think they want you to go first.

8 MR. ZAUNER: We have no objection.

9 JUDGE SIPPEL: All right.

10 MR. HOWARD: No objection, Your Honor.

11 JUDGE SIPPEL: Then No. 32 is received in evidence  
12 at this time. Does that conclude cross-examination?

13 MS. SCHMELTZER: I believe so, Your Honor. Just a  
14 minute. That, that completes our cross-examination, Your  
15 Honor.

16 JUDGE SIPPEL: All right. Do we have redirect? Do  
17 you want to go off the record for five or --

18 MR. GREENEBAUM: If we --

19 JUDGE SIPPEL: -- ten minutes?

20 MR. GREENEBAUM: -- could have three or four or five  
21 minutes, Your Honor?

22 JUDGE SIPPEL: Let's take a five-minute recess.

23 MR. GREENEBAUM: We won't -- we'll have very little.  
24 We just want to make sure and make it as little as possible.

25 JUDGE SIPPEL: Thank you very much. We're off the

1 record.

2 (Off the record. On the record.)

3 JUDGE SIPPEL: Please be seated.

4 MR. GREENEBAUM: Sometimes a break works, Your  
5 Honor. We do not have any questions we have to ask Ms. Barr.  
6 We do want to read in two sections of the deposition for  
7 completeness in line with the prior discussion on the record,  
8 and then we will be through with this witness.

9 JUDGE SIPPEL: And that's the 1994 deposition?

10 MR. GREENEBAUM: Yes, Your Honor. Ms. Abrutyn will  
11 do that?

12 MS. ABRUTYN: Page 47 --

13 JUDGE SIPPEL: Why don't we get the page before we  
14 go on the record. That'll be page 47?

15 MS. ABRUTYN: Line 21.

16 JUDGE SIPPEL: 47, line 21. And what will be the  
17 other reference?

18 MS. ABRUTYN: That will be -- the close of that will  
19 be page 50, line 23. The other reference is page 90, line 15.

20 JUDGE SIPPEL: 9 0?

21 MS. ABRUTYN: 9 0.

22 JUDGE SIPPEL: Line 15 to?

23 MS. ABRUTYN: It'll be through page 91, line 6.

24 MS. SCHMELTZER: Wait a minute. Can -- could you  
25 repeat this again? Page 41-- 47 what?

1 MS. ABRUTYN: 47, line 21.

2 MS. SCHMELTZER: Through what?

3 MS. ABRUTYN: Through page 50, line 23. And then  
4 page 90, 90, line 15, through page 91, line 6. And then  
5 picking up again after the lawyers are done talking, page 92,  
6 line 5, through line 23.

7 (Off the record. On the record.)

8 JUDGE SIPPEL: Back on the record. Ms. Abrutyn has  
9 given the reporter excerpts of the deposition of Ms. Emily  
10 Barr of July 29, 1994. The specific pages and line numbers  
11 were previously read into the record as a proffer. And the  
12 reporter now has copies of those pages and I'm instructing the  
13 reporter to type those pages in the transcript, identifying  
14 them, of course, as the deposition -- excerpts of the deposi-  
15 tion of Emily Louise Barr taken Friday, July 29, 1994.

16 (Whereupon, the following is the Excerpt of the  
17 Deposition of Emily Louise Barr taken July 29, 1994, beginning  
18 at page 47, line 21, and concluding with page 50, line 23:)

19 Q Did you go through your files to look for  
20 the Covington notes at that point in time?

21 A I don't recall.

22 Q Did you have any conversation with your  
23 counsel -- and I'm not asking you the substance of  
24 your conversation, but did you have any conversation  
25 with your counsel in June of 1993 as to whether or

1 not the Covington handwritten notes would be  
2 relevant to this document request?

3 A What I recall having conversation about --  
4 I do recall telling counsel that Janet did not have  
5 her calendar, but -- and that I had -- that I had  
6 gotten the information from notes.

7 Q From handwritten notes?

8 A From handwritten notes, yes.

9 Q And did you tell counsel that you had the  
10 handwritten notes?

11 A I don't recall --

12 MR. HOWARD: Objection to the question.  
13 Privilege.

14 MS. SCHMELTZER: I'm asking her if she  
15 said she had them. I'm not asking her what --

16 MR. HOWARD: You're asking her what she  
17 told counsel. That's privileged information.

18 MS. SCHMELTZER: So you did have a  
19 conversation -- excuse me. You did -- you had -- I  
20 think I better get some water.

21 (Off the record 11:01 a.m.)

22 (On the record 11:02 a.m.)

23 BY MS. SCHMELTZER:

24 Q So am I correct that you did have a  
25 discussion in June of 1993 concerning Ms.

1 Covington's handwritten notes?

2 A Well, I can't tell you if the discussion  
3 was in June specifically, but I know it was --

4 Q But it was in response to the document  
5 production request.

6 A Well, I don't even know that it was  
7 necessarily in response to the document production  
8 request. I know that there was -- as I was  
9 gathering documents for counsel in anticipation of  
10 the hearing and I guess the deposition, I told them  
11 that Janet Covington could not -- did not have her  
12 calendar and -- no, I'm sorry. Let me rephrase  
13 that. I told them that I got the information from  
14 notes. But I was asked, at that point in time, to  
15 ask Janet if I could have her calendar, her original  
16 calendar.

17 Q And you were not asked to -- you were not  
18 asked for the notes.

19 A I don't know that I was or that I wasn't.  
20 I know that I called Janet on at least two occasions  
21 and I asked her specifically for her calendar.

22 Q And what did she tell you?

23 A Well, her first comment to me was, "Gee, I  
24 don't know if I still have it. You know, we've done  
25 some housecleaning and Bud's moved a bunch of stuff



1       around," Bud is her husband, "and I just don't know  
2       where it is." And I said, "Well, why don't you go  
3       look for it? Because I really need it. You based  
4       your notes on everything that's in that calendar and  
5       I really need the calendar."

6               So, she said, "All right. I'll see if I  
7       can find it." She did look for it. She called me  
8       back and told me she was unable to locate it. I do  
9       know that I was asked a second time by counsel to  
10      ask her again to try and locate the calendar, which  
11      I did. She was still unable to locate it.

12             Q     Did you make any attempt at that time to  
13      locate the notes, the handwritten notes?

14             A     Well, I don't recall that I did or that I  
15      didn't.

16             Q     So you don't recall whether you did or you  
17      didn't send them to counsel at that time?

18             A     Well, I now know that I sent them to  
19      counsel in June of 1993 because much later, you  
20      know, as you well know, in February, that memo was  
21      located. But I don't -- I still have no  
22      recollection of having sent them to counsel.

23             (Whereupon, that concludes the Excerpt of the Depo-  
24      sition of Emily Louise Barr taken July 29, 1994, beginning at  
25      page 47, line 21, and concluding with page 50, line 23.)

1 (Whereupon, the following is the Excerpt of the  
2 Deposition of Emily Louise Barr taken July 29, 1994, beginning  
3 at page 90, line 15, and concluding with page 91, line 6:)

4 Q Do you remember having a meeting with  
5 anyone from Baker and Hostetler after the judge  
6 issued an order adding the issues?

7 A I had a lot of meetings with people at  
8 Baker and Hostetler. I can't remember the exact  
9 date that I met with them.

10 Q Did you have a lot of meetings with people  
11 from Baker and Hostetler after the issues were  
12 added? The issues were added on February 1, 1994.  
13 So after that date, in early February 1994, did you  
14 have a lot of meetings with people from Baker and  
15 Hostetler?

16 A Well, I've had a lot of meetings recently  
17 with people from Baker and Hostetler. I don't  
18 remember when the meetings began to take place.

19 Q Do you remember a meeting with Stephanie  
20 -- and I hope I'm pronouncing your name right --  
21 Abrutyn where you discussed the NBC correspondence  
22 --

23 (Whereupon, that concludes the Excerpt of the Depo-  
24 sition of Emily Louise Barr taken July 29, 1994, beginning at  
25 page 90, line 15, and concluding with page 91, line 6.)

1 (Whereupon, the following is the Excerpt of the  
2 Deposition of Emily Louise Barr taken July 29, 1994, beginning  
3 at page 92, line 5, and concluding with page 92, line 23:)

4 Q Do you remember any meeting where you  
5 discovered the Janet Covington notes?

6 A Yes.

7 Q Do you recall when that meeting occurred?

8 A It occurred in -- sometime in February  
9 1994.

10 Q And who was at that meeting?

11 A Stephanie Abrutyn.

12 Q Was anyone else present?

13 A No.

14 Q Do you recall how long that meeting  
15 lasted?

16 A No, I don't.

17 Q Was it a whole day?

18 A No, I don't believe so, but I don't recall  
19 the exact length of it.

20 Q Did it begin in the morning or the  
21 afternoon?

22 A I don't know. I just don't remember.

23 Q Do you remember whether it was one hour or  
24 four hours?

25 A I don't remember.

1 (Whereupon, that concludes the Excerpt of the Depo-  
2 sition of Emily Louise Barr taken July 29, 1994, beginning at  
3 page 92, line 5, and concluding with page 92, line 23.)

4 JUDGE SIPPEL: And does that then conclude the  
5 redirect of the -- of, of Scripps Howard?

6 MR. GREENEBAUM: It does, yes.

7 JUDGE SIPPEL: All right. Are there any other  
8 matters that want to be in the record now? Mr. Zauner, you  
9 had indicated some desire with respect to the July 16th  
10 depositions?

11 MR. ZAUNER: Right.

12 MS. SCHMELTZER: July 16, 1993.

13 JUDGE SIPPEL: Yes. Thank you. July 16, 1993.

14 MR. ZAUNER: Correct.

15 MR. GREENEBAUM: Page 108, Mr. Zauner?

16 MR. ZAUNER: What?

17 MR. GREENEBAUM: Page 108 or 109?

18 MR. ZAUNER: Yeah. This is in conjunction with the  
19 testimony that was stricken at page 3 of Exhibit 36, and there  
20 at the time -- the sentence was: "At the same time I was  
21 asked to describe the facsimile, I gave the complete and  
22 accurate description of the contents of the facsimile." You  
23 caused to be stricken the "complete and accurate" based upon  
24 my objection that the best evidence would be the transcript of  
25 the deposition itself. And I, I would like to have put into

1 the record -- let's see, I had originally suggested page 109  
2 of the July 16, 1993, deposition, and I believe other counsel  
3 has indicated to me that she would go at least as far forward  
4 as --

5 MR. GREENEBAUM: Last line on 108 starts that.

6 MR. ZAUNER: 108.

7 JUDGE SIPPEL: Is there any objection to that?

8 MR. GREENEBAUM: None, Your Honor.

9 JUDGE SIPPEL: None?

10 MS. SCHMELTZER: When -- where were you starting?

11 MR. ZAUNER: Page 108 and 109. Actually, actually,  
12 I think the testimony --

13 MS. SCHMELTZER: Well --

14 MR. ZAUNER: -- is really beginning with --

15 MS. SCHMELTZER: Your -- I really think --

16 MR. ZAUNER: -- line 22 of 108.

17 JUDGE SIPPEL: Wait. Let, let Mr. Zauner finish.

18 MR. ZAUNER: We'd probably begin with line 22 of  
19 page 108 and go through to the -- line 22 of 109.

20 MR. GREENEBAUM: We have no objection to that, Your  
21 Honor.

22 MS. SCHMELTZER: Well, Your Honor, I would like the  
23 -- in, in order to put this in context, I think you need pages  
24 105, 6, and 7 as well. So, I would ask that it be 105 through  
25 109.

1 MR. HOWARD: The pages -- the earlier pages deal  
2 with discussions with NBC, but it's only pages 108 and 109  
3 that deal with the contents of the, the facsimile.

4 MS. SCHMELTZER: No, the -- there is a question on  
5 the earlier pages about whether she wrote any kind of a letter  
6 to NBC.

7 MR. GREENEBAUM: Where is that?

8 MS. SCHMELTZER: And what they sent her as well.

9 JUDGE SIPPEL: That's on page 105, line 8. "Did you  
10 write any kind of a letter to NBC asking for this  
11 information?"

12 MS. SCHMELTZER: And also 106 she said what she  
13 asked them for.

14 MR. GREENEBAUM: But that's all stuff she testified  
15 to today. Mr. Zauner is just trying to cover one point, a  
16 description.

17 MR. ZAUNER: All I want is the description of the  
18 contents of the --

19 MS. SCHMELTZER: Well, that's also in -- on page  
20 106. I think, I think the whole section is relevant.

21 MR. ZAUNER: Well, what did you -- I don't even see  
22 the word facsimile on 106.

23 MS. SCHMELTZER: The word facsimile is not mentioned  
24 until 108, but I think that's relevant too.

25 JUDGE SIPPEL: Well, again, I -- I'm going to rely

1 on, on rule 403 again. I believe there is -- what -- you see,  
2 105 to 108 information is substantially in the record already,  
3 that is, in the same substantially -- in substantially the  
4 same form in her direct testimony and, gosh, it goes even back  
5 to her Declaration. Well, I'm not going to say anything about  
6 the Declaration, but it is in her direct testimony. I'm going  
7 to suggest that we use the same process with respect to this  
8 July 16th deposition, give copies of those pages 108 and 109  
9 to the court reporter. And, madam reporter, you'll start at  
10 line 22 of 108 and type in everything on page 109. And that's  
11 the -- will be identified as Excerpts of the Deposition of  
12 Emily Louis Barr taken July 16, 1993.

13 (Whereupon, the following is the Excerpt of the  
14 Deposition of Emily Louise Barr taken July 16, 1993, beginning  
15 at page 108, line 22, and concluding with page 109, line 22:)

16 Q You mentioned that you gave NBC a list of  
17 issues?

18 A Yes.

19 Q Was that in writing?

20 A No, it was not. Actually, it was faxed to  
21 them.

22 Q Would you have a copy of that fax?

23 A No, I don't.

24 Q Do you know what the issues were that you  
25 asked for?

1           A     Yes.  They were the issues that were on  
2     our programs issues lists from second quarter and  
3     third quarter 1991.

4           Q     All of the issues that were on the list,  
5     or just some of them?

6           A     All of the issues relating to this period  
7     of time.

8           Q     Who did you contact at NBC?

9           A     I don't remember the woman's name, to be  
10    honest with you.  It was an archivist or the manager  
11    of archives.

12          Q     Was that to whom you faxed the letter?

13          A     Yes.

14                (Whereupon, that concludes the Excerpt of the Depo-  
15    sition of Emily Louise Barr taken July 16, 1993, beginning at  
16    page 108, line 22, and concluding with page 109, line 22.)

17          JUDGE SIPPEL:  Ms. Barr, you're excused as a  
18    witness.

19          WITNESS:  Thank you very much.

20          JUDGE SIPPEL:  Thank you very much.

21          MR. ZAUNER:  Your Honor, there is one other point on  
22    this issue that I'd like the record to have, which the record  
23    -- I think is missing in the record now, and --

24          JUDGE SIPPEL:  That is?

25          MR. ZAUNER:  -- that is the date on which the Covin-



1 gton notes were given or provided to Four Jacks. I don't know  
2 whether this record reveals that. We know when they were  
3 discovered and, and other things about the discovery and, and  
4 the fact that Emily Barr provided them to counsel, but I, I  
5 don't know whether the official trial record here reflects the  
6 date on which --

7 MS. SCHMELTZER: We were told --

8 MR. ZAUNER: -- Scripps Howard provided the  
9 Covington notes to Four Jacks.

10 MS. SCHMELTZER: We were -- Four Jacks was told the  
11 documents were found -- existed in a conference that we had  
12 with Scripps Howard at 3:30 p.m. on February 10, 1994, in the  
13 offices of Baker & Hostetler, and subsequently the documents  
14 were produced on February 10, 1994.

15 MR. GREENEBAUM: Your Honor, there's one other  
16 matter. May we assume that the Smiths are going to come in  
17 the order in which you marked their --

18 MS. SCHMELTZER: I don't recall how we've marked  
19 their --

20 MR. GREENEBAUM: I'm trying to -- who's going to  
21 show up.

22 MS. SCHMELTZER: I, I think David --

23 JUDGE SIPPEL: Well, let's talk off the record about  
24 that and then we'll go back on.

25 (Off the record. On the record.)

1 JUDGE SIPPEL: Before we, we close on this, this is  
2 actually the close of the last phase with respect to the issue  
3 against Scripps Howard, and Ms. Schmeltzer has asked me to  
4 note for the record, and I will, that there is still a pending  
5 motion before the Commission with respect to authorization for  
6 Four Jacks to take the deposition of Mr. David Roberts, the  
7 prior associate attorney with Hostetler & Baker and now an  
8 attorney with the Federal Communications Commission. If the  
9 Commission authorizes the deposition, the deposition will go  
10 forward and we'll consider the use of the evidence in a later  
11 phase if need be. If the Commission denies the request, then  
12 that's the end of it.

13 Then that concludes the case with respect to the  
14 issue against Scripps Howard.

15 MR. HOWARD: Your Honor, may I just -- may I offer  
16 an -- a question on that as to whether the further consider-  
17 ation of this proceeding is in any way going to be delayed by  
18 the, the -- you -- Your Honor has ruled that Mr. Roberts'  
19 deposition shall not be taken, and thus I think the, the fact  
20 that some matter is on appeal should not have any effect on  
21 whether -- on the -- going forward with this case while the  
22 Commission is -- who knows when the Commission may address the  
23 question.

24 JUDGE SIPPEL: Well, we'll talk about -- I didn't  
25 directly answer your question. We will, we will talk about

1 scheduling after we complete with the Smiths. I don't intend  
2 -- I haven't thus far allowed the outstanding requests for the  
3 Roberts' deposition to any way delay what I'm doing with the  
4 case, and I don't intend to. I intend to keep that commit-  
5 ment. However, let's wait -- let's take it one step at a  
6 time. Let's get the testimony completed next week, and then  
7 we'll address the question of what we do from there.

8 MR. HOWARD: Thank you.

9 JUDGE SIPPEL: That concludes it. I'm going --  
10 we're going to go off the record to discuss some administra-  
11 tive matters, and then we'll, we'll get right back on again.  
12 Okay.

13 (Off the record. On the record.)

14 JUDGE SIPPEL: In off the record discussion it's  
15 been agreed that we will start on Monday the 12th -- we'll  
16 return, that is, the 12th of September on Monday at 9:30 and  
17 we'll start with the testimony of Mr. David Smith. As a  
18 preliminary matter, we will be receiving into evidence the  
19 sworn testimony of the Four Jacks principals -- or at least  
20 Mr. David Smith's, if not all, and we would also expect to  
21 receive into evidence a stipulation with respect to tax infor-  
22 mation. We are in recess, then, until 9:30 Monday, September  
23 12th. Thank you.

24 (Whereupon, the hearing adjourned at 3:35 p.m.,  
25 Thursday, September 8, 1994, to be continued at 9:30 a.m.,

1 Monday, September 12, 1994.)  
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IN RE APPLICATION BALTIMORE, MARYLAND

**Name**

MM DOCKET NO. 93-94

**Docket No.**

WASHINGTON, D.C.

**Place**

SEPTEMBER 8, 1994

**Date**

We, the undersigned, do hereby certify that the foregoing pages, numbers 1553 through 1746, inclusive, are the true, accurate and complete transcript prepared from the reporting by Paula McNulty in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

9/7/94

**Date**

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9/8/94

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